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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/665,194	09/17/2003	Yu Zheng	PAT-1486CIP	5574
7590	09/28/2006		EXAMINER CANFIELD, ROBERT	
Raymond Sun Law Offices of Raymond Sun 12420 Woodhall Way Tustin, CA 92782			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 09/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/665,194

Applicant(s)

ZHENG, YU

Examiner

Robert J. Canfield

Art Unit

3635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/18/03 & 11/29/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

1. This is a first Office action on the merits for application serial number 10/665, 194 filed 09/17/03 as a continuation of application serial number 10/346,832, which has issued as U.S. Patent 6,901,940. Claims 1-17 are pending.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-3, 6-9 and 12-17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 and 6-19 of copending Application No. 10/735401. Although the conflicting claims are not identical, they are not patentably distinct from each other because the elements of the instant claims are included within the co-pending claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

4. Claims 13-17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 of copending Application No. 11/064380. Although the conflicting claims are not identical, they are not patentably distinct from each other because the elements of the instant claims are included within the co-pending claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Claims 13-17 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,901,940. Although the conflicting claims are not identical, they are not patentably distinct from each other because each the elements of the instant claims are included within the patented claims.

6. Claims 1-12 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-24 of U.S. Patent No. 6,901,940 in view of U.S. Patent 5,429,437. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '940 patent claims each the elements of the instant claims except that the base has a greater diameter than the rim which would have been an obvious modification to the '940 at the time of the invention to one having ordinary skill in the art in of the teachings of the Shaw et al. patent.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3 and 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,429,437 to Shaw et al.

Shaw provides a collapsible [col. 3, line 14, Figure 4 (which shows concentric circles) ] structure having an annular ring formed at the upper edge of wall 12 which is folded over to form a sleeve that retains a frame member 15 that can be collapsed and folded onto itself [col. 3, lines 47]. Flexible and waterproof material [col. 3, line 23] material defines a containing space for holding water. The base is of greater diameter than that of the rim [col. 3, line 34, Figure 3, and clm. 7]

9. Claims 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,971,188 to Kellogg et al.

In figure 4 Kellogg provides collapsible structure having at least three foldable frame members 22, four panels 20, and a bottom sheet 50 attached thereto to enclose an interior space.

10. Claims 1, 4, 6, 7, 10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 2,714,726 to Hasselquist.

Hasselquist provides a collapsible structure having an inflatable annular rim 18, which is inherently foldable as it is made from flexible plasticized vinyl resins.

The base 10 has a larger diameter than the rim 15.

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Patent 5,429,437 to Shaw et al.

Shaw provides each of the elements of the claim except for the PVC material.

PVC is a well known flexible, liquid impermeable material for use in liquid storing structures and would have been an obvious material choice at the time of the invention to one having ordinary skill in the art for its inherently material properties. PVC is an art recognized equivalent to the polyethylene sheeting and film of Shaw. There is no problem in the art solved by using PVC rather than polyethylene.

13. The IDS filed 12/18/03 and the supplemental IDS filed 11/29/04 have been considered. Initialed copies of the 1449 forms are attached.

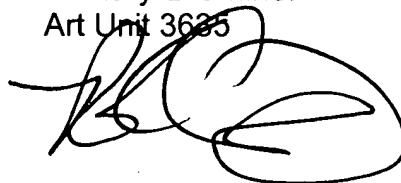
14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Canfield whose telephone number is 571-272-6840. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Naoko Slack can be reached on 571-272-6848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert J Canfield  
Primary Examiner  
Art Unit 3635



09/15/06